

House Bill 383 (AS PASSED HOUSE AND SENATE)

By: Representative Mills of the 25th

A BILL TO BE ENTITLED

AN ACT

To amend Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, the "Georgia Condominium Act," so as to define certain terms; to provide that a declarant shall pay certain expenses; to provide for exceptions; to provide for an exception for a certain obligation to provide a certificate of occupancy; to provide for the effect on land use and zoning ordinances or laws of an expandable condominium; to provide for the creation of a subcondominium; to provide for a subassociation; to provide for insurance; to provide for the effect of certain liens; to provide for eminent domain; to provide for the description of certain units; to provide for assessments; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, the "Georgia Condominium Act," is amended in Code Section 44-3-71, relating to definitions, by adding new paragraphs to read as follows:

"(19.1) 'Master association' means an association of a master condominium.

(19.2) 'Master condominium' means a condominium in which the condominium instruments permit one or more of the units to constitute a subcondominium."

"(26.1) 'Subassociation' means an association of a subcondominium.

(26.2) 'Subcondominium' means the property consisting of a unit of an existing condominium lawfully submitted under this article by the recordation of separate condominium instruments pursuant to this article."

"(27.1) 'Subunit' means a unit that constitutes a portion of a subcondominium."

SECTION 2.

Said article is further amended in Code Section 44-3-80, relating to allocation and liability for common expenses and how assessments are made, by revising subsection (d) as follows:

1 ~~“(d)(1) No unit owner other than the association shall be exempted from any liability for~~
2 ~~any assessment under this Code section or under any condominium instrument for any~~
3 ~~reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the~~
4 ~~use or enjoyment of his unit or any part of the common elements. The declarant shall pay~~
5 ~~for all common expenses until the first common expense assessment is due from any unit~~
6 ~~owner. Thereafter, no unit owner other than the association shall be exempted from any~~
7 ~~liability for any assessment under this Code section or under any condominium~~
8 ~~instrument for any reason whatsoever, including, without limitation, abandonment,~~
9 ~~nonuse, or waiver of the use or enjoyment of his or her unit or any part of the common~~
10 ~~elements.~~

11 (2) Notwithstanding paragraph (1) of this subsection, if authorized by the declaration,
12 a declarant who is offering units for sale may elect to be excused from payment of
13 assessments assessed pursuant to subsection (c) of this Code section against those unsold
14 and unoccupied units for a stated period of time after the original declaration is recorded,
15 not to exceed 24 months after the date the original declaration is recorded; provided,
16 however, that as to assessments assessed pursuant to subsection (c) of this Code section,
17 the declarant must pay common expenses incurred during such period which exceed the
18 amounts assessed against other unit owners in the same condominium. During any period
19 in which the declarant is excused from payment of assessments assessed pursuant to
20 subsection (c) of this Code section:

21 (A) No capital contributions, start-up funds, initiation fees, or contributions to capital
22 reserve accounts which are receivable from unit purchasers or unit owners and payable
23 to the association at closing may be used for payment of common expenses;

24 (B) No portion of the payment of assessments collected from owners intended to be
25 utilized for reserves for deferred maintenance, reserves for depreciation, or other
26 reserves, as shown on the operating budget for the condominium, may be used for
27 payment of common expenses; and

28 (C) No prepayments of assessments made by owners shall be used for the payment of
29 common expenses prior to the time the assessments would otherwise be due.

30 (3) If during the period that the declarant is excused from payment of assessments as
31 provided in paragraph (2) of this subsection common expenses are incurred resulting
32 from a casualty which is not covered by proceeds from insurance maintained by the
33 association, such common expenses shall be assessed against all unit owners owning
34 units on the date of such casualty, and their respective successors and assigns, including
35 the declarant with respect to units owned by the declarant. In the event of such an
36 assessment, all units shall be assessed in accordance with the allocation of the liability

1 for common expenses set forth in the declaration as provided in subsection (c) of this
2 Code section.

3 (4) During any such time as the declarant has the right to control the association pursuant
4 to Code Section 44-3-101, any capital contributions, start-up funds, initiation fees, or
5 contributions to capital reserve accounts which are receivable from unit purchasers or unit
6 owners and payable to the association at closing and any portion of the payment of
7 assessments collected from owners intended to be utilized for reserves for deferred
8 maintenance, reserves for depreciation, or other reserves, as shown on the operating
9 budget for the condominium, shall be deposited into one or more separate reserve
10 accounts and shall not be used to pay for any common expenses, without the agreement
11 of the unit owners of units to which two-thirds of the votes in the association pertain,
12 exclusive of any vote or votes appurtenant to any unit or units then owned by the
13 declarant. No waiver of the right of any unit owner to grant or withhold consent to such
14 agreement shall be valid."

15 SECTION 3.

16 Said article is further amended by revising paragraph (5) of subsection (e) of Code Section
17 44-3-111, relating to sales of residential condominium units for residential occupancy,
18 information required to be furnished by seller, buyer's right to void contract, limitations
19 period, attorney's fees, and penalty for willful violation, as follows:

20 "(5) If, but only if, any applicable statute, ordinance, rule, or regulation requires, permits,
21 or provides for the issuance of a certificate of occupancy by any officer, department, or
22 agency of any governmental entity, the contract shall contain an express obligation on the
23 part of the seller to furnish to the buyer at or prior to closing a true, correct, and complete
24 copy of a duly issued certificate of occupancy covering the unit which is the subject
25 matter of the covered contract unless the buyer executes a separate agreement at or before
26 closing setting forth that the contract applies to a condominium unit for which the seller
27 is not obligated to obtain a certificate of occupancy before conveyance of the unit to the
28 buyer and such agreement contains the following statement in at least 14-point boldface
29 type or capital letters:

30 'THE SELLER IS NOT OBLIGATED TO OBTAIN A CERTIFICATE OF
31 OCCUPANCY BEFORE CONVEYANCE OF THE UNIT TO THE BUYER. THE
32 LACK OF A CERTIFICATE OF OCCUPANCY SHALL NOT EXCUSE THE
33 BUYER FROM ANY OBLIGATION TO PAY ASSESSMENTS TO THE
34 ASSOCIATION.'; and"

SECTION 4.

Said article is further amended in Code Section 44-3-114, relating to the effect of such article upon land use, zoning, building, and subdivision laws and the effect of a certain Code section, by adding a new subsection to read as follows:

"(c) No subdivision law, ordinance, or regulation shall apply to the additional property of an expandable condominium for so long as the additional property may be added to the expandable condominium in accordance with the provisions of this article and the declaration. If the additional property is not deemed separate from the submitted property under any zoning, land use, subdivision, building, or life safety law, code, regulation, or ordinance at the time of the establishment of the condominium, the additional property shall not be deemed separate from the submitted property under any zoning, land use, subdivision, building, or life safety law, code, regulation, or ordinance so long as the additional property may be added by the declarant to the expandable condominium in accordance with the provisions of this article and the declaration."

SECTION 5.

Said article is further amended by adding a new Code section to read as follows:

"44-3-117.

(a) Except as otherwise set forth in this Code section, the creation of a subcondominium shall not limit the application of this article in its entirety to such subcondominium.

(b) To the extent permitted in the condominium instruments, a condominium unit may be submitted by the owner thereof to a subcondominium and such owner shall thereafter be deemed the declarant, as such term is defined in paragraph (13) of Code Section 44-3-71, of such subcondominium.

(c) Upon the creation of a subcondominium:

(1) No tax or governmental assessment shall be levied against the unit as a whole but instead shall only be levied on the subunits;

(2) The subassociation shall represent and be responsible for acting on behalf of the subunit owners in discharging the rights and obligations of the unit owner as a member of the master association, including, without limitation, voting the interests of the unit in the master association and paying assessments owing on the unit to the master association;

(3) The insurance required in paragraph (1) of Code Section 44-3-107 may be obtained by either the subassociation or the master association for the condominium in which the subcondominium is a unit;

(4) No lien for labor or services performed or materials furnished in the improvement of the unit shall be filed against the subcondominium as a whole but shall only be filed

1 against the subunits, and such lien may be discharged by the owner of any subunit in the
2 same manner provided in subsection (d) of Code Section 44-3-95;

3 (5) If a subassociation has been created for property affected by an eminent domain
4 proceeding, no eminent domain action shall be brought against the subassociation as a
5 whole but only against the subunit owners thereof; and

6 (6) No description of a subunit shall be deemed to be vague, uncertain or otherwise
7 insufficient if the description complies with Code Section 44-3-73.

8 (d) The description of submitted property or additional property to a subcondominium
9 required by this article shall be valid if described by a legal description by metes and
10 bounds or by a description of a unit in a master condominium in the manner provided for
11 in Code Section 44-3-73.

12 (e) All sums lawfully assessed by a master association against a subassociation shall have
13 the same effect as provided in subsection (a) of Code Section 44-3-109.

14 The recording of the declaration for a subcondominium pursuant to this article shall
15 constitute record notice of the existence of the lien, and no further recordation of any claim
16 of lien for assessments shall be required.

17 (f) In the event any lien becomes effective against a subunit as provided in subsection (e)
18 of this Code section, the subassociation may remove that lien from the subunits by:

19 (1) The payment of the amount attributable to the subunits, or

20 (2) Bonding of the amount assessed against the subassociation

21 or any subunit owner may remove that lien from his or her subunit by the payment of the
22 amount attributable to his or her subunit. The amount shall be computed by reference to
23 the liability for common expenses pertaining to that condominium unit pursuant to
24 subsection (c) of Code Section 44-3-80. Subsequent to the payment, discharge, or other
25 satisfaction of such amount, the subunit owner of that subunit shall be entitled to have that
26 lien released as to his or her subunit in accordance with applicable provisions of law, and
27 notwithstanding anything to the contrary in Code Sections 44-3-80 and 44-3-109, the
28 master association shall not assess or have a valid lien against that subunit for any portion
29 of the common expenses incurred by the master association in connection with that lien.

30 (g) Not less than 30 days after notice is sent by certified mail or statutory overnight
31 delivery, return receipt requested, to the subunit owner both at the address of the subunit
32 and at any other address or addresses which the subunit owner may have designated to the
33 master association in writing, the lien of the master association may be foreclosed by the
34 master association by an action, judgment, and foreclosure in the same manner as other
35 liens for the improvement of real property, subject to superior liens or encumbrances, but
36 any such court order for judicial foreclosure shall not affect the rights of holders of superior
37 liens or encumbrances to exercise any rights or powers afforded to them under their

1 security instruments. The notice provided for in this subsection shall specify the amount
2 of the assessments then due and payable together with authorized late charges and the rate
3 of interest accruing thereon. No foreclosure action against a lien arising out of this
4 subsection shall be permitted unless the amount of the lien is at least \$2,000.00. Unless
5 prohibited by the master condominium instruments, the master association shall have the
6 power to bid on the subunit at any foreclosure sale and to acquire, hold, lease, encumber,
7 and convey the same. The lien for assessments shall lapse and be of no further effect, as
8 to assessments or installments thereof, together with late charges and interest applicable
9 thereto, four years after the assessment or installment first became due and payable.

10 (h) Any subunit owner, mortgagee of a subunit, person having executed a contract for the
11 purchase of a subunit, or lender considering the loan of funds to be secured by a subunit
12 shall be entitled upon request to a statement from the subassociation or its management
13 agent setting forth the amount of assessments past due and unpaid together with late
14 charges and interest applicable owed by the subassociation to the master association. If the
15 subassociation or its management agent states an amount less than the amount actually
16 owed by the subassociation to the master association, the lien created by Code Section
17 44-3-109 for any amounts in excess of the stated amount shall be subordinate to the lien
18 of any first priority mortgage covering the subunit.

19 (i) In addition to the documents required to be furnished to the prospective buyer under
20 subsection (b) of Code Section 44-3-111, if the covered contract applies to a condominium
21 unit which is part of a subcondominium, the following shall be provided to the prospective
22 buyer:

23 (1) A copy of the declaration for the master condominium, and a copy of each
24 amendment thereto; and

25 (2) A copy of the articles of incorporation and bylaws of the master association, and of
26 each amendment to either."

27 SECTION 6.

28 All laws and parts of laws in conflict with this Act are repealed.